

WATER QUALITY CONTROL BOARD NORTH COAST REGION

EXECUTIVE OFFICER'S REPORT

September 2003

CLEANUPS AND SPECIAL INVESTIGATIONS DIVISION

[Staff Contact: Joan Fleck]

On June 26, 2003 the Board adopted Administrative Civil Liability Order (ACLO) No. R1-2003-0075 in the matter of Carl Boyett, Carol Boyett and Boyett Petroleum (Dischargers) for violations of Time Schedule Order No. 98-114. The ACLO ordered the Dischargers to collectively pay the Administrative Civil Liability in the amount of \$1,305,000 with a \$50,000 payment due now and the permanent suspension of \$1,205,000 contingent upon compliance with a revised Time Schedule Order schedule. The schedule includes the suspension of \$251,000 for each of the following:

- Submittal of an acceptable final Corrective Action Plan (CAP) by August 15, 2003.
- CAP implementation to abate the discharge to Santa Rosa Creek by October 15, 2003 and the submittal of a report by December 1, 2003.
- CAP implementation to remove and/or effectively treat remaining on and off sources of contamination by October 15, 2003 and the submittal of a report by December 1, 2003.
- CAP implementation to restore the beneficial uses of groundwater and remediate the on and off site dissolved phase gasoline plume and the submittal of a report within 45 days of system installation.

On July 24, 2003, the Dischargers appealed the Board's action to the State Water Resources Control Board, Office of Chief Counsel (SWRCB/OCC). The Dischargers petitioned that the SWRCB/OCC:

- Find that no violation occurred,
- Rescind the fines imposed by the ACLO,
- Modify the deadlines in the ACLO to include a one-year extension to allow for the coordination of work with the Santa Rosa Prince Memorial Greenway creek restoration project (PMGP),
- Direct Regional Water Board staff to require other parties to participate, and
- Order the Regional Water Board to provide written final agency directives.

On October 9, 2003, staff submitted a response to the petition and a copy of the administrative record including the file and June 26, 2003 hearing tapes. The timing of the SWRCB/OCC action on this item is unknown.

Concurrently, the Dischargers submitted an acceptable CAP by August 15, 2003. On October 3, 2003, the Executive Officer (EO) notified the Dischargers that the CAP was acceptable and \$251,000 was permanently suspended. The EO also recommended the utilization of the 60-day extension clause in the ACLO and consideration of interim remedial actions to supplement the final CAP to allow the coordination of work with the PMGP and avoid additional penalties. On October 7, 2003, the Dischargers' legal counsel requested the 60-day extension and notified Regional Water Board staff that a CAP addendum was forthcoming.

WATERSHED PROTECTION DIVISION

Copeland Creek Flood Control Project Halted

[Staff Contact: Andrew Jensen]

On March 17, 2003 staff issued a letter to the Sonoma County Water Agency (SCWA) authorizing the agency to proceed under existing Waste Discharge Requirements on the Copeland Creek Flood Maintenance Project, Rohnert Park, Sonoma County. The SCWA had proposed to dredge a portion of Copeland Creek for flood control purposes. The proposed project was to leave mature vegetation on the streambanks and construct a low-flow channel in the dredged section. In addition, appropriate erosion and sediment control measures were to be constructed and maintained until the channel was stabilized.



The project proceeded in early September, however it was internally shut down by the SCWA by September 8, 2003 since the work had not been conducted in accordance with the applicable permits and approvals. While no immediate water quality problems were evident because the project was implemented during an extreme low flow period, the activities had resulted in significant loss of riparian vegetation and mature riparian trees along the creek. Riparian vegetation and trees are critical to maintaining conditions in waterways that are necessary during specific times of the year for fish rearing, habitat and migration.

Board staff inspected the site on September 10, 2003 after being alerted of the problems by the SCWA. Staff documented that the majority of

riparian canopy had been removed and only stumps and slash remained in violation of the March 17, 2003 authorization letter.



Board staff gave the SCWA a Notice of Violation for the Project on September 25, 2003 that required the SCWA to submit a final restoration workplan (Workplan) by October 8, 2003. Following the submission of a preliminary Workplan and a meeting with Board staff and the California Department of Fish and Game the SCWA submitted a final Workplan on October 7, 2003. The final Workplan called for the SCWA to restore the impacted reach of Copeland Creek and conduct a riparian replanting program on an upstream section of Copeland Creek, to offset the loss of riparian habitat.

The sediment removal has since been completed, and the riparian vegetation replanting is scheduled to be completed by October 17, 2003. Regional Water Board staff will meet on-site with the SCWA, Department of Fish and Game, and SCWA contractors on October 21, 2003, to review the completed work to ensure that the impacts have been adequately mitigated.

Update on Occidental County Sanitation District

[Staff Contact: Cathleen Goodwin]

On March 27, 2003, the Board held a public hearing in the matter of the Occidental County Sanitation District wastewater treatment facility. The Board adopted revised cease and desist and time schedule orders to extend the time schedule for completion of tasks relating to implementing a capital improvement project for the facility. The Board was also asked to provide the Executive

Officer with direction regarding a request by the Sonoma County Water Agency for suspension of a \$50,000 civil liability assessed under Administrative Civil Liability (ACLO) Order No. 97-126. The Board requested additional information regarding the violations history at this facility. The Occidental CSD and Sonoma County Water Agency are referred to as the Dischargers in this report.

Violations History for Occidental CSD

The Dischargers have worked diligently and cooperatively to reduce the number and magnitude of violations at this facility in response to the Regional Water Board's enforcement actions in 1997 as described in the paragraphs below.

1993-1997 During the approximately four and a half year period from May 27, 1993 through September 30, 1997, there were 2,368 violations of waste discharge requirements at this facility, including 1,532 effluent chlorine residual, 752 effluent pH, 42 receiving water (pH and turbidity), 15 exceedances of the one-percent flow limitation, 14 effluent total suspended solids (TSS), eight effluent coliform, and five small sanitary sewer overflows. Violations occurred on 1,548 of the 1,597 days in this time period. The facility also discharged an estimated 2.17 million gallons of treated effluent commingled with storm water from the facility's storage reservoir to Dutch Bill Creek in late May 1996, in violation of the Basin Plan summertime discharge prohibition.

These violations were addressed in enforcement actions taken in late 1997, specifically Cease and Desist Order (CDO) No. 97-74, Time Schedule Order No. 97-75, and ACLO No. 97-126. These enforcement orders required the implementation of short- and long-term improvement projects to reduce violations at the facility. ACLO No. 97-126 imposed a \$125,000 administrative civil liability of which \$25,000 was due and payable and \$100,000 was suspended in two \$50,000 increments contingent upon the completion of crucial tasks specified in CDO No. 97-74.

These enforcement actions were deemed necessary due to the chronic nature of the pH and chlorine residual violations, the significant release of effluent to Dutch Bill Creek during the summertime discharge prohibition period, adverse impacts to receiving water quality, and lengthy delays by the Dischargers to take corrective action. In response to the three enforcement

orders, the Dischargers installed dechlorination and pH adjustment equipment in September 1997, essentially eliminating chlorine residual and pH violations.

1997-2003 During the approximately six year period from October 1997 through September 2003, there were 210 violations of waste discharge requirements at this facility, including 56 effluent biological oxygen demand (BOD), 44 effluent TSS, 30 receiving water, 20 minor exceedances of the one-percent flow limitation, 17 effluent coliform, 17, effluent chlorine residual, nine acute fish toxicity, seven failures to record and report data, four effluent pH, four minor sanitary sewer overflows, and two effluent settleable solids. There have been no violations at this facility from April 17, 2003 through September 30, 2003.

The majority of the violations occurred during the surface water discharge season. However, no adverse impacts to water quality were documented. Many of the effluent limitation violations were in the effluent discharged to the effluent storage pond, where the effluent commingles with storm water prior to discharge to Dutch Bill Creek.

The Dischargers have worked diligently to address these violations through operation and maintenance changes and interim projects, such as dredging the settling pond in June 2003. These efforts have been successful by (1) reducing the magnitude (how much above the effluent limitation each violation was) of many of the BOD and TSS violations and (2) reducing the number of violations in 2003 to six. The Dischargers plan to install baffles in the aeration pond to further improve BOD and TSS removals by early 2004.

Mandatory Minimum Penalties The Regional Board Executive Officer will issue ACL Complaint No. R1-2003-0125 on November 3, 2003 assessing mandatory penalties of \$216,000 for 83 effluent limitation violations that occurred between January 1, 2000 and April 16, 2003. The Complaint will assess mandatory minimum penalties for violations subject to California Water Code (CWC) Sections 13385(h) and (i). The Complaint allows the Dischargers to direct \$190,000 of the mandatory penalties toward completion of two compliance projects in accordance with the time schedule included in the

Complaint. The Dischargers must pay \$26,000 of the mandatory penalty to the State Water Resources Control Board.

Discretionary Penalties In addition to mandatory minimum penalties, Section 13385 of the CWC provides for the assessment of discretionary civil liabilities for violations of orders or prohibitions of the Regional Water Board. There were 127 violations that occurred since October, 1997 that were not subject to mandatory penalties and could be subject to discretionary civil liabilities. Twenty-three of the 127 occurred while there was a discharge of effluent commingled with storm water from the storage pond to Dutch Bill Creek, amounting to approximately 7,850,000 gallons. Staff recommend against assessing discretionary penalties because (1) the majority of the violations did not cause any adverse impacts to the water quality or beneficial uses of Dutch Bill Creek, (2) the Dischargers are working cooperatively toward completion of the long-term capital improvement project, (3) the Dischargers have invested resources toward interim projects to reduce violations until the long-term project is completed, and (4) the Dischargers are working against serious financial constraints to resolve the wastewater issues in this small community.

UPDATE ON SIGNIFICANT NEW LEGISLATION

Various bills were signed into law affecting the Regional Water Boards, all taking effect January 1, 2004. A brief, preliminary overview of the more significant bills follows.

SB 810 (Burton): timber

Prohibits the California Department of Forestry from approving a timber harvest plan (THP) in a sediment-impaired watershed if the Regional Water Board finds that the proposed timber operations will cause or contribute to a violation of the Basin Plan. This authority can be delegated to the Executive Officer, so long as the delegation permits the timber operator to petition to the Regional Water Board for review of the finding. Also provides that, before the Forest Practices Act provision statutorily exempting all timber operations from WDRs can take effect, both the State Water Board and the U.S. EPA, must certify the Forest Practice Act and Rules as best

management practices. Previously only the U.S. EPA needed to certify.

AB 897 (Jackson): water code enforcement, permitting and administrative review

Enhances penalties for refusing or failing to furnish technical or monitoring reports or for falsifying information in those reports. Extends the time from 120 days to 140 days after submitting a report of waste discharge when the discharge can proceed without a permit, and makes the provision relating to the expiration of that time period only applicable to discharges that don't create or threaten to create pollution or nuisance. Allows the State Water Board to rule on stay motions without conducting a hearing. Expands the scope of violations subject to civil penalties in various ways, including the removal of the prior requirement that such violations be intentional, negligent or resulting in a condition of pollution or nuisance (essentially making violations "strict-liability".) Makes conditions imposed through 401 certifications enforceable under Porter-Cologne.

SB 923 (Sher): waivers

Refines waiver provision in Porter-Cologne to explicitly require that any waiver must require compliance with the Basin Plan (in addition to the current requirement that the waiver be "in the public interest"), and some form of monitoring. Allows the imposition of annual fees on waiver coverage, with funds collected to be used to establish and implement waiver program. Clarifies notice requirements on the adoption of waivers.

SB 1004 (Soto): alternative water supplies, perchlorate reporting

Clarifies and restates existing law by explicitly authorizing state and regional boards to include in a cleanup or abatement order the requirement that the discharger provide or pay for replacement water supplies, with technical provisions relating to water replacement plan development and mediation options. Imposes notice of discharge, storage reporting, and penalty provisions regarding perchlorate, with definitions relating thereto significantly limiting the scope of the type of facilities subject to these requirements. Adds penalties for failure to notify OES of oil or petroleum discharges.

AB 1248 (Aghazarian): expands notice requirements for specified types of orders

Requires the State and Regional Water Boards, as appropriate, to provide at least 30 days notice and public comment prior to adopting waste discharge requirements, water reclamation requirements, and State Water Board water quality orders (the orders issued in response to petitions for review of Regional Water Board actions).

AB 1541 (Montanez): mandatory minimum penalty (MMP) violations

Corrects a drafting problem with the mandatory minimum penalty statute to more clearly define "effluent limitations" for purposes of the penalties. Classifies the failure to file certain monitoring reports as "serious violations" subject to MMPs.

TIMBER HARVEST ACTIVITIES

During the month of September 2003 the Timber Harvest Division received 32 new Timber Harvest Plans (THPs) and 6 amendments for existing THPs. Staff participated in First Review meetings for 24 THPs and participated in Second Review meetings for 10 THPs. Twelve inspections were conducted during September 2003.

NOTE: This is a snap shot of a working database with data entered as of October 17, 2003.

CALIFORNIA WATER CODE SECTION 13267 LETTER ORDERS

There were no California Water Code section 13267(b) letter Orders issued during the month of September 2003.

CLEANUP AND ABATEMENT ORDERS

No Cleanup and Abatement Orders were issued during September 2003.

SPILLS, COMPLAINTS, AND INVESTIGATIONS

Two complaints were received during the month of September 2003. On September 19, 2003 a citizen made a complaint after witnessing someone falling "very large" redwood trees at a location close to 19150 Coleman Valley Road adjacent to Coleman Creek. On September 29, 2003 staff received an anonymous complaint alleging that persons at a private junk yard in the headwaters of Kid Creek, tributary to Austin Creek were burying cars, gas tanks and other items within close proximity to the creek.

Two sewage system overflows were reported during September 2003. On September 1, 2003 the Town of Windsor reported a raw sewage overflow from a manhole to a storm drain. No sewage reached the waterway and the Town of Windsor cleared the pipeline and cleaned up the spill. On September 30, 2003 the City of Santa Rosa reported a sewage system overflow of reclaimed water. Approximately 74,250 gallons reached Santa Rosa Creek.

ADMINISTRATIVE CIVIL LIABILITY COMPLAINTS/ ORDERS

No Administrative Civil Liability Complaints or Orders were issued during September 2003.

UNDERGROUND STORAGE TANK CLEANUP FUND PROGRAM

For the month of September 2003, there was a total of \$688,589 in funds issued to tank owners in Region 1 from the Underground Storage Tank Cleanup Fund. There were three (3) letters of commitment issued during the month of September 2003.

PROPOSITION 65 NOTIFICATIONS

Three Proposition 65 Notifications were submitted to our office during September 2003. On

September 2, 2003 the consultant for Exxon Service Station, 1101 Yulupa Avenue in Santa Rosa reported that in samples taken on May 21, 2003 MTBE was detected at a concentration of 1.5 ug/L.

On September 12, 2003 staff were notified that MTBE at 5.3 ug/L was detected in a domestic well sample collected as part of an Underground Storage Tank release investigation on September 10. The investigation is at Cleone Grocery, 24400 Highway 1 in Fort Bragg.

On September 23, 2003 the consultant for Exxon Service Station, 1101 Yulupa Avenue in Santa Rosa, reported that on September 2, 2003 MTBE at 21.1 ug/L and Benzene at 0.8 ug/L were both detected in a quarterly sample for the Mayette Apartments, which is adjacent to the Exxon site.

LEAKING UNDERGROUND STORAGE TANKS

New Leaking Underground Storage Tanks cases to report include: E&M Electric, 12 Matheson Street, Healdsburg; Pacific Bell (Santa Rosa Facility), 3260 Sebastopol Road, Santa Rosa; Petrich Property, 600 Orchard Avenue, North, Ukiah; and, SBC Facility, 32750 Eureka Hill Road, Point Arena.

CLEAN WATER ACT SECTION 401 CERTIFICATIONS

Eight (8) new applications for Clean Water Act Section 401 Water Quality Certification were received in September 2003. Twelve (12) 401 Certifications were issued in September 2003.

Information regarding all proposed certifications is available in the Board's web site at:

http://www.swrcb.ca.gov/rwqcb1/Public_Notices/401certs/notice401.html

PUBLIC FILE REVIEW

From September 1 through September 30, 2003, three written requests were made for review

and/or copies of the Regional Water Board's records. In addition, a total of 25 people came into the office and requested review of files.

UPCOMING REGIONAL WATER BOARD MEETINGS

The North Coast Regional Water Board will hold its regularly scheduled Board Meeting on December 3, 2003 at the River Lodge Conference Center in Fortuna, California.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our web-site at <http://www.swrcb.ca.gov>.